

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re app. of: Ulrich Issberner et al. Examiner: Yate K.R. Cutliff

App. No.: 10/599,682 Conf. No.: 2782 Group Art Unit: 1621

Filed: July 30, 2007 Docket No.: C 2906 PCT/US

For: **FATTY ACID ESTERS, PROCESSES FOR THEIR PRODUCTION AND INCORPORATION INTO COSMETIC AND/OR PHARMACEUTICAL FORMULATIONS**

DECLARATION OF HELGA GONDEK UNDER 37 C.F.R. 1.132

I, Helga Gondek, declare and say that:

1. I am a co-inventor of this invention. I am currently employed by Cognis GmbH as a chemical laboratory technician. I have held this position for about ten (10) years. Previously, I worked for Henkel KGaA as a chemical laboratory technician for about nineteen (19) years. I have experience with emulsions and other cosmetic and/or pharmaceutical compositions comprising pentaerythritol esters.

2. I am familiar with the prosecution history of U.S. Patent Application Serial No. 10/599,682 and have reviewed the claims currently pending therein. I understand that the claims of this application have been rejected as allegedly being obvious in view of Lindner (US 4,332,702), Memita et al. (WO 2002/22548; US 6,939,980), Miranol Chemical Co. (EP 0163806), Sakurai et al. (US 4,113,635), Barth et al. (US 2,441,555), Burrell et al. (US 2,427,255), Bauer et al. (WO 2003/028690; US 2004/0258721), Miranol Chemcial Co. (EP 0151992) and Plough, Inc. (EP 0179416). I have reviewed these publications and the compositions disclosed therein.

3. I have conducted or supervised the performance of tests as described herein.

4. A first test was performed to test the performance of an Example Formulation A comprising pentaerythritol tetrabehenate as a wax component as exemplified by Plough, but without C_{16/18} esters of pentaerythritol (this test is reported as

Example A in Table 1 below). This formulation was collected in a beaker and was observed to result in an emulsion with poor stability.

5. A second test was performed to test the performance of an Example Formulation B comprising a mixture of pentaerythritol esters obtained by reaction of pentaerythritol with a fatty acid mixture containing 42-48% by weight C₁₆ fatty acid and 50-56% by weight C₁₈ fatty acid, with an ester distribution of 12-19% by weight monoesters, 25-35% by weight diesters, 30-40% by weight triesters, and 6-11% by weight tetraesters, but without pentaerythritol tetrabehenate (this test is reported as Example B in Table 1 below). This formulation was collected in a beaker and was observed to result in an emulsion with good stability.

6. The following Table 1 presents the specific compositions and results observed as described above in Paragraphs 4 and 5:

Table 1

Ingredients	INCI	A (weight %)	B (weight %)
Pentaerythritol tetrabehenate		5.00	
Pentaerythritol (C _{16/18}) ester mixture ¹			5.00
EUMULGIN® B2	Ceteareth-20	2.00	2.00
EUTANOL® G 16 S	Hexyldecanol	16.00	16.00
Glycerol		3.00	3.00
Euxyl K 100	Benzyl alcohol and methylchloroisothiazolinone and methylisothiazolinone	0.10	0.10
Water		73.90	73.90

¹ See Paragraph 5 above for a description of this mixture of pentaerythritol esters.

7. Enclosed herewith is a photograph demonstrating the properties of each of the Examples A and B as described above. Example Formulation B is collected in

the beaker on the left. Example Formulation A is collected in the beaker on the right. This photograph illustrates the substantial differences observable by a person skilled in the art between emulsions with poor stability and good stability. More particularly, Example Formulation B collected in the left beaker is a stable white emulsion. In contrast, Example Formulation A collected in the right beaker completely separated both during and after preparation, and is therefore unstable.

8. These tests are meaningful and significant to a person of ordinary skill in the art. More particularly, a person of ordinary skill in the art would understand that an emulsion which separates so readily, as evidenced by Example Formulation A, is unacceptable as a cosmetic formulation, in contrast to Example Formulation B.

9. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Helga Gondek
Helga Gondek

October 19, 2009

Date

App. No.: 10/599,682
Declaration of Helga Gondek under 37 C.F.R. 1.132

Attorney Docket No. C 2906 PCT/US

